

AN ACT

ENTITLED, An Act to revise the authority of magistrate courts and to revise certain provisions pertaining thereto.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

As used in this chapter, the term, magistrate, means a clerk magistrate or a magistrate judge appointed under the authority of this chapter. Any magistrate judge appointed under the authority of this chapter shall be licensed to practice law in the State of South Dakota.

Section 2. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Pursuant to the provisions of S.D. Const., Art. V, § 4, there is hereby established within each judicial circuit a magistrate court.

Section 3. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Any magistrate court with a magistrate judge presiding is a court of record. However, no magistrate court with a clerk magistrate presiding is a court of record.

Section 4. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Subject to such rules as may be promulgated by the Supreme Court, the presiding circuit judge in each judicial circuit shall appoint a sufficient number of magistrates as may be necessary to provide adequate and qualified judicial personnel for each county and municipality in the circuit.

Section 5. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Each magistrate shall be appointed by the presiding judge of the circuit court and serve at the pleasure of the presiding judge. However, the Supreme Court may, by rule, provide that magistrates may be appointed for a definite term.

Section 6. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

The compensation of a magistrate shall be fixed by law and for such purpose the Supreme Court in its annual consolidated budget for the Unified Judicial System shall make recommendations relating thereto. The state shall provide from funds appropriated therefor for the salaries and travel expenses of the magistrates of the circuit court.

Section 7. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Unless appeal is denied by law, there is a right of appeal to the circuit court from any final order or judgment of the magistrate court, and such appeal shall be taken in the manner prescribed by law or rule for appeals to the circuit court.

Section 8. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Each county in the state shall provide suitable and adequate facilities for the magistrate court, including the facilities necessary to make the space provided functional for its intended use.

Section 9. That chapter 16-12A be amended by adding thereto a NEW SECTION to read as follows:

Any municipality in the state may, at its discretion, and in cooperation with the presiding judge of the circuit, provide suitable and adequate quarters for a magistrate court assigned principally to serve the municipality, including the facilities necessary to make the space provided functional for its intended use.

Section 10. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

If the business of a magistrate court with a magistrate judge presiding becomes congested or if a magistrate judge is, for any cause, unable to act, the Chief Justice of the Supreme Court may, by order, temporarily transfer to such magistrate court a magistrate judge from another circuit. The magistrate judge acting in a county other than one in his or her own circuit shall have all the powers and duties of a magistrate judge regularly appointed and qualified therein.

Section 11. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

Retired justices and judges, with their consent, may be authorized by the Chief Justice of the Supreme Court to preside in any action or proceeding, or over any term of court, in the magistrate court. If so authorized and acting, the orders, judgments, and decrees of that court entered by such retired justice or judge are as effectual for all purposes as though made by a regularly elected or appointed magistrate. The Supreme Court shall provide for the reimbursement of their expenses.

Section 12. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate judge appointed pursuant to this chapter may solemnize marriages. The clerk of courts shall collect a fee of twenty dollars for a magistrate's performance of a marriage. The clerk of courts shall remit fees collected under this section to the state treasurer for deposit in the state general fund.

Section 13. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate judge appointed pursuant to this chapter may administer oaths, take acknowledgments, and depositions.

Section 14. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

Section 15. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

No party may be deprived of the assistance of an attorney, at the party's expense, in small claims or magistrate court.

Section 16. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to fix bond or take personal recognizance of persons charged with an offense.

Section 17. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts:

- (1) To accept defaults for petty offenses;
- (2) To try contested cases involving a petty offense;
- (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
- (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance, bylaw, or other police regulation of a political subdivision;

if the punishment is a fine not exceeding one thousand dollars or imprisonment for a period not exceeding one year, or both such fine and imprisonment and to impose sentence upon a plea of guilty or nolo contendere. Acceptance of not guilty or nolo contendere pleas shall be in accordance with

§§ 23A-7-2 and 23A-7-8, as applicable.

Section 18. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or other police regulation of a political subdivision.

Section 19. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to act as a committing magistrate for all purposes.

Section 20. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to try and determine all cases of misdemeanor and actions or proceedings for violation of any ordinance, bylaw, or other police regulation of a political subdivision.

Section 21. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to try and determine all small claim proceedings.

Section 22. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to try and determine all civil actions, if the debt, damage, claim, or value of the property involved does not exceed ten thousand dollars. Any magistrate court with a magistrate judge

presiding has jurisdiction in small claims proceedings, if the debt, damage, claim, or value of the property involved does not exceed eight thousand dollars.

Section 23. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a magistrate judge presiding has jurisdiction, upon assignment of the presiding judge of the circuit, to act in lieu of a circuit judge having jurisdiction heretofore granted to county courts or district county courts or judges thereof in relation to the enforcement or administration of the provisions of Titles 27A and 27B.

Section 24. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

Except in small claims proceedings, a verbatim record of all proceedings and evidence at trials before a magistrate court with a magistrate judge presiding shall be maintained either by electrical devices or by stenographic means, as the magistrate may direct. However, if any party to the action requests stenographic reporting of the proceedings, the reporting shall be done stenographically. The requesting party in a civil matter shall pay the costs of reporting the proceedings. If no record is kept, the appeal, if appeal is authorized by law, shall be de novo in circuit court.

Section 25. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

Unless appeal is denied by law, there is a right of appeal to the circuit court from any final order or judgment of the magistrate court with a magistrate judge presiding, and such appeal shall be taken in the manner prescribed by law or rule for appeals to the circuit court.

Section 26. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

Any attorney who is a part-time magistrate judge may practice law under such conditions as the

circuit judges sitting en banc in the judicial circuit may provide, subject to Supreme Court rule.

Section 27. That chapter 16-12B be amended by adding thereto a NEW SECTION to read as follows:

No magistrate judge appointed on a full-time basis may act as counsel or be associated with others as counsel in any court of this state. Each magistrate judge is bound by the Code of Judicial Conduct adopted by the Supreme Court.

Section 28. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

Any duly appointed clerk or any deputy clerk who meets the qualifications of a clerk magistrate may be appointed as a clerk magistrate. Any clerk or deputy clerk who has been appointed a clerk magistrate may act as such in any circuit of this state if placed on temporary duty assignment in another circuit.

Section 29. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

No person is eligible for appointment to the office of clerk magistrate unless such person is a graduate of a high school or has attained the equivalent of a high school education as indicated by the possession of a certificate of equivalency issued by the State Department of Education or the former Department of Public Instruction or the former Division of Elementary and Secondary Education based upon the record made on the general education development test.

Section 30. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

No clerk magistrate may take office for the first time as a magistrate until such person has attended an institute on the duties and functioning of the magistrate's office to be held under the supervision of the Supreme Court, unless such attendance is waived by the Supreme Court.

Section 31. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

The Supreme Court shall establish the institute and shall provide that the institute be held at least once every two years. It may establish an institute at such other times and for such other purposes as it deems necessary and may require the attendance of any clerk magistrate.

Section 32. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A clerk magistrate appointed pursuant to this chapter may solemnize marriages. The clerk of courts shall collect a fee of twenty dollars for a clerk magistrate's performance of a marriage. The clerk of courts shall remit fees collected under this section to the state treasurer for deposit in the state general fund.

Section 33. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A clerk magistrate appointed pursuant to this chapter has authority to administer oaths, take acknowledgments, and depositions.

Section 34. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

Section 35. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

No party may be deprived of the assistance of an attorney, at the party's expense, in small claims or magistrate court.

Section 36. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as

follows:

A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts to act as a committing magistrate if voluntary and knowledgeable waiver of preliminary hearing has been given before the court. The magistrate court may conduct preliminary hearings as a committing magistrate unless demand is made by the defendant prior to such hearing to have the hearing conducted before a magistrate judge or a circuit judge to be assigned by the presiding judge.

Section 37. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts to fix bond or take personal recognizance of persons charged with an offense in accordance with the schedule adopted pursuant to subdivision 16-2-21(8).

Section 38. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts:

- (1) To accept defaults for petty offenses;
- (2) To try contested cases involving a petty offense;
- (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
- (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance, bylaw, or other police regulation of a political subdivision;

if the punishment is a fine not exceeding two hundred dollars or imprisonment for a period not exceeding thirty days, or both such fine and imprisonment and to impose sentence upon a plea of guilty or nolo contendere, which sentence shall be in accordance with § 23-1A-22 or schedules adopted pursuant to subdivision 16-2-21(8). However, if the offense or violation is not covered by

said schedules, the magistrate court may impose a sentence of a fine as authorized by statute, ordinance, bylaw, or police regulation or two hundred dollars, whichever is less. Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and 23A-7-8, as applicable.

Section 39. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or other police regulation of a political subdivision in accordance with schedules adopted pursuant to subdivision 16-2-21(8).

Section 40. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts, in noncontested civil actions or noncontested small claims proceedings where the amount of money or damage does not exceed eight thousand dollars, to take the necessary evidence and to enter a judgment.

Section 41. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as follows:

Except in small claims proceedings, a verbatim record of all proceedings and evidence at trials before a clerk magistrate shall be maintained either by electrical devices or by stenographic means, as the magistrate may direct. However, if any party to the action requests stenographic reporting of the proceedings, the reporting shall be done stenographically. The requesting party in a civil matter shall pay the costs of reporting the proceedings. If no record is kept, the appeal, if appeal is authorized by law, shall be de novo in circuit court.

Section 42. That chapter 16-12C be amended by adding thereto a NEW SECTION to read as

follows:

Unless appeal is denied by law, there is a right of appeal to the circuit court from any final order or judgment of the magistrate court with a clerk magistrate presiding, and such appeal shall be taken in the manner prescribed by law or rule for appeals to the circuit court.

Section 43. That §§ 16-12A-1 to 16-12A-3, inclusive, 16-12A-3.2, 16-12A-4, 16-12A-5 to 16-12A-7, inclusive, and 16-12A-8 to 16-12A-30, inclusive, be repealed.

An Act to revise the authority of magistrate courts and to revise certain provisions pertaining thereto.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1055

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1055

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State